



Texas Department of Insurance

Financial, Company Licensing & Registration, Mail Code 305-2C

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TRUST AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, 20 __, by and between _____, (“Company”), and _____, a [National] [Texas] Banking Association organized and existing under the laws of the [United States] [State of Texas], located at _____, Texas, (“Trustee”).

WITNESSETH:

WHEREAS, the Company is engaged in the insurance business and has or will have by virtue of writing insurance in the United States of America a number of United States insureds and reinsureds whose premiums, as well as potential claims, are payable in currency of the United States of America; and,

WHEREAS the Company has established or will establish a United States Branch of the Company (“U.S. Branch”) and has made an application for admission and licensing with the State of Texas; and,

WHEREAS, the U.S. Branch has or will obtain authority to write the following lines of insurance:

_____; and,

WHEREAS, the U.S. Branch is a separate operating entity under the management control of the Company with a manager in the United States and has been formed and is being or will be operated as if it were a Texas domestic insurance company; and,

WHEREAS, the Company desires to establish a Trust Fund in the U.S. for its U.S. Branch as security for its United States Policyholders and reinsureds whose claims are payable in currency of the United States of America; and,

WHEREAS, the Company also desires for its U.S. Branch to become authorized as an admitted alien insurer in the State of Texas and such other Commonwealths, Districts or States of the United States of America as the Company may decide; and,

WHEREAS, the Company desires to establish an initial minimum trust amount, to be treated as if it were minimum capital and surplus of \$_____ by the establishment of this Trust; and,

WHEREAS, the Company has appointed the Trustee under this Trust Agreement as its lawful United States Trustee to hold assets for the U.S. Branch business unit by which insurance business is transacted within the United States by Company;

Now, THEREFORE, the Company has paid over to the Trustee any combination of cash and/or U.S. Government Bonds with a market value of at least _____ dollars (\$_____), receipt of which is hereby acknowledged, to be held by the Trustee in trust for the uses and purposes and upon the terms and conditions hereinafter set forth:

ARTICLE I

DEFINITION OF TERMS

The following words and phrases as used in this Trust Agreement shall have the respective meanings hereafter set forth, unless the context otherwise requires.

1.1 **United States Policy** -- any contract or policy of insurance or reinsurance issued or any agreement to insure made by the (U.S. Branch) Company wherein the premiums and losses are expressed to be payable to a United States Policyholder in currency of the United States of America, and which is issued to a resident of or with respect to property situated in a state in which the (U.S. Branch) Company named thereon is licensed or able to conduct insurance business.

1.2 **Claim** -- any of the following:

(a) a claim against the (U.S. Branch) Company by a Policyholder as defined in Section 1.5 of this article for a loss under a United States Policy;

(b) a claim against the (U.S. Branch) Company by a Third Party Claimant for a loss under a United States Policy excluding punitive or exemplary damages and extracontractual obligations not expressly covered by the United States Policy; or

(c) a claim against the (U.S. Branch) Company by a Policyholder for the return of unearned premium under a United States Policy.

1.3 **Commissioner** -- the Commissioner of Insurance for the State of Texas.

1.4 **Income** -- the return derived from the use of principal, as such return is defined in the Texas Property Code, §113.102(a).

1.5 **Policyholders** -- those holders of United States policies who are:

(a) Citizens of or domiciled in the United States of America;

(b) Corporations organized under the laws of the United States of America, or of any of the Commonwealths, Districts, States, Territories or Possessions thereof; or

(c) Unincorporated Associations (including Partnerships), or Corporations not within the description in Subsection (b), the majority in interest of the beneficial interest or of the Stock of which is owned by persons or Corporations within the descriptions in Subsections (a) or (b) or both, and any other persons, Corporations or Associations who are holders, assignees, pledgees or mortgagees of United States policies.

1.6 **Principal** -- the items defined as principal under the Texas Property Code, §113.102(b).

1.7 **Property** -- any type of property as defined in the Texas Property Code, §111.004(12).

1.8 **Trust Fund** -- the cash, investments and other property from time to time in the hands of the Trustee under this Agreement constituting the principal (as distinguished from the income) of the Trust created by this Agreement, which shall have a market value of not less than \$ _____ during the term of this Trust Agreement. The Trust Fund shall also include Accounts A, B, and C as follows:

Account A -- the initial deposit of _____ (\$ _____) cash or equivalents which shall be at all times maintained as security for Policyholders under this Agreement.

Account B -- all funds deposited with the Trustee as either unearned premium or loss reserves arising out of the insurance operations of the U.S. Branch either for United States Policies or other policies of insurance.

Account C -- all other funds, including but not limited to earnings from the investment of Accounts A and B, on deposit with or a part of the Trust.

ARTICLE II

PROVISIONS RELATING TO THE TRUST

2.1 Priority. The Trust Fund shall be exclusively available for the protection of Policyholders and Third Party Claimants except as otherwise provided in this section. All trustee assets of the Company at all times shall be maintained in the Trust Fund, separate and distinct from all other assets, and shall be continuously kept within the United States. First priority for payment availability is for the payment of claims defined in §1.2(a) and (b) of this Agreement. Second priority for payment availability is for payment for the return of unearned premiums defined in §1.2(c) of this Agreement. However, Account C of the Trust Fund shall also be available for the payment of any fees and expenses properly incurred by the Trustee in connection with the administration of the Trust.

2.2 U.S. Manager. The Company has entered or will be entering into a management agreement with _____ (“U.S. Manager”) to act as the Manager for the United States Branch of Company. The U.S. Manager will act on behalf of Company in all matters that require Company action or approval under this Trust Agreement, and Trustee is authorized to rely upon said Manager for any action required of Company in this Agreement.

2.3 Claims. (a) The parties agree that nothing contained in this Agreement relieves (U.S. Branch) Company from paying claims in accordance with the Texas Insurance Code, Article 21.55, and that such article governs the timing and payment of claims submitted to the (U.S. Branch) Company. The Company, by and through its U.S. Branch, at its sole option and discretion may waive any and all of the conditions set out in Paragraphs (1) through (4) of Subsection (b) of this section, and direct the Trustee in writing to pay from the Trust Fund the claim of any Policyholder against the (U.S. Branch) Company under a United States Policy or other policy of insurance without such claim having become enforceable as defined in Subsection (b) of this section. Such claims shall be satisfied by the Trustee out of the Trust Fund without regard to the rights of any other Policyholder or Policyholders. The Trustee shall be absolutely protected in acting upon any such written direction from the (U.S. Branch) Company without investigation and shall be under no obligation to see to the application of any such payment or to ascertain or inquire as to the validity of such claim or the propriety of such direction.

(b) A claim against the (U.S. Branch) Company under a United States Policy, including a claim for the return of unearned premiums, shall be treated in the order of priority stated above in Section 2.1. Such claim shall be enforceable directly by the Policyholder against the Trust Fund when the four conditions set out in paragraphs (1) through (4) of this subsection have been satisfied.

(1) The Policyholder has obtained a judgment against the (U.S. Branch) Company in any Court of competent jurisdiction within the United States of America by respect of the (U.S. Branch) Company’s liability under a United States Policy.

(2) Such judgment has become final in the sense that the particular litigation has been concluded, either through the failure to appeal within the time permitted therefor or through the final disposition of any appeal or appeals that may be taken. The word “Appeal” used in this paragraph is to include any similar procedure for review permitted by the applicable law;

(3) The Policyholder has filed with the Trustee a certified copy of such judgment, together with such proof as to its finality including a certification from the Policyholder’s legal counsel should the Trustee in its sole discretion require, and the Policyholder has complied with the other conditions specified in this Article as the Trustee shall require.

(4) Thirty days have passed from the date of the filing with the Trustee of the said certified copy of the said judgment and all of said proofs without such judgments having been satisfied. However, the expiration of such thirty (30) day period shall not be required in the event that such period extends beyond the termination of the trust.

The determination by the Trustee that the above conditions have been satisfied will be conclusive and binding upon all parties, whereupon the judgment shall be satisfied by the Trustee out of the Trust Fund.

(c) In the payment of any claims the Trustee shall first pay such claim out of the Account B insofar as available. When Account B is exhausted, the Trustee shall pay out of Account C until that account is exhausted. Any claims remaining unpaid shall then be paid out of Account A. Provided, however, no claim against or under a policy of insurance which is not a United States Policy shall ever be assessed against or paid out of Account A.

(d) In the event of termination of the Trust by a Receiver or other legally authorized party acting on behalf of (U.S. Branch) Company in an insolvency or bankruptcy proceeding, the Trustee may rely upon the written directions of said Receiver or other legally authorized party concerning the payment of claims.

(e) No Policyholder shall be entitled at any time to charge the Trustee in respect of any assets other than the assets actually in the Trust Fund at the time his claim becomes enforceable as defined in Section 2.3(b). Nor shall any Policyholder be entitled to require from the Trustee any accounting or otherwise inquire into the course of the administration of the Trust or to question any act or thing done or suffered by the Trustee, or otherwise to enforce the Trust, the sole right of any Policyholder being to receive the amount of his claim after it has become enforceable, as defined in Section 2.3(b), from the assets actually in the Trust Fund and available for such payment as provided under this Agreement.

2.4 Investments. (a) Unless otherwise directed by the Company in writing, the Trustee shall retain the specific property whether consisting of cash, investments or any other property from time to time comprising the Trust Fund, except, however, that if the claim of a Policyholder under a United States Policy shall become enforceable as defined in Section 2.3 of this Article at a time when there is insufficient cash in the Trust Fund with which to satisfy such claim, the Trustee shall sell such and so much of the property then in the Trust Fund as directed in writing by the Company, or in the absence of receipt of such instructions by the Trustee within the period mentioned in Paragraph (4) of Section 2.3(b) of this Article, the Trustee shall sell such and so much of the property then in the Trust Fund as in its absolute discretion it shall deem appropriate for the purpose of raising sufficient cash with which to satisfy such claim.

(b) Company agrees and directs that the minimum Trust amount of \$ _____ in Account A shall be invested as if it were the minimum capital and surplus of (U.S. Branch) Company and shall be invested only in the instruments or vehicles set out in paragraphs (1) through (4) of this subsection as follows:

(1) Lawful money of the United States on deposit with federally insured banking institutions;

(2) Bonds of the State of Texas; or Bonds or other evidence of indebtedness of the United States of America or any of its agencies when such obligations are guaranteed as to the principal and interest by the United States of America;

(3) Notes secured by first mortgages upon unencumbered real estate in the State of Texas, the title to which is valid, and the payment of which notes is insured, in whole or in part by the United States of America or any of its agencies, provided that such investments in such notes shall not exceed one-half (1/2) of the minimum Trust amount herein; or

(4) Bonds or other interest-bearing evidence of indebtedness of any counties, cities, or other municipalities of the State of Texas.

(c) The (U.S. Branch) Company further agrees and directs that investments of the Trust Fund in excess of _____ (\$ _____) shall be governed and made in accordance with the provisions of Articles _____ Texas Insurance Code, as amended.

(d) The (U.S. Branch) Company shall have the responsibility for making investments of the Trust Fund from time to time, except as it otherwise directs in writing.

(1) The Trustee shall not be required to take any action in regard to investments and property held in the Trust other than to collect the interest and dividends or other sums payable thereon unless otherwise so directed in writing by the Company. The Trustee shall retain any and all investments and property held by it from time to time under this Agreement, even though they may not be recognized as legal investments for trust funds under the laws of the State of Texas.

(2) The Trustee shall deposit the Trust Fund, or any part thereof, in one or more such banks or trust companies (which may include itself) in the United States of America. The Trustee shall vary any deposits and sell and dispose of any investments and property at and under the direction in writing of the Company.

(3) The Trustee shall be under no duty to give any investment advice to any person in connection with the Trust Fund but, provided the Trustee itself shall have received actual notice thereof, shall always notify the Company as to any rights of conversion, subscription, voting or other rights pertaining to any investments held in the Trust Fund and of any default in the payment of principal or interest.

(4) The Trustee is authorized and shall have power to receive such securities and property as the company from time to time may transfer or vest in the Trustee or place under the Trustee's control. The Trustee shall have the power to hold, invest, reinvest, manage and dispose of such securities and property for the uses and purposes and in the manner and according to the provisions contained in this Agreement.

(5) As and when directed by the Company in writing for each particular case but not otherwise, the Trustee shall exercise as specifically so directed by the Company in respect of any property held in the Trust Fund all rights, powers and privileges that are or may be lawfully exercised by any person owning similar property in his own right, free of limitations imposed by any rule of law, public policy or statute with respect to the Trust Fund.

(e) The Company reserves the right at its sole option to substitute cash in currency of the United States of America or specifically designated stocks, bonds, or other securities for any cash or investments then forming part of the Trust Fund; provided, however, that the amount of cash and/or other assets and the market value at the time of substitution of the investments so substituted (without regard to accrued income thereon) shall not decrease the value of Account A of the Trust Fund below the amount of _____ (\$_____).

(f) The Trustee may hold any investments or other property held under this Agreement in the name of a nominee or in its own name individually within the addition of any words showing its fiduciary capacity. The term "hold" shall include authority to deposit any part or all of the aforesaid property, which consists of securities in registered or unregistered form, at either the Federal Reserve Bank (under Federal Book Entry procedure), Depository Trust Company or any other centralized securities depository system, whether now or hereafter organized, as may be selected by the Trustee. All securities in registered form are to be registered in the name of Trustee's nominee or a nominee of the centralized securities depository system.

2.5 Subsequent Contributions to the Trust Fund. (a) The Trustee shall collect and receive the income earned from monies or property deposited in the various accounts of the Trust Fund.

(b) The Company may make further contributions to Account A (the principal of the Trust Fund) from time to time, and such contributions are to constitute additions to Account A for the life of the Trust.

(c) The Manager for or the U.S. Branch of Company will deposit from time to time various amounts of cash or equivalents as loss reserves and unearned premium reserves for business written by the U.S. Branch. The Trustee shall maintain said reserves in Account B.

(d) All income from property held in Account A and Account B, all property specifically designated for Account C by (U.S. Branch) Company, and all property held by the Trust not specifically designated as a part of Account A or B shall be deposited in Account C.

(e) Additional property may be transferred or paid to the Trustee by the Company for the purpose of deposit to the Trust Fund, but the Trustee shall be under no duty or obligation to require the

Company to make any such transfers or payments. It shall be conclusively presumed that any and all such transfers or payments to the Trustee have been properly made.

(f) The Trustee is authorized to certify as to the existence of the Trust established in connection with this Agreement and the assets comprising the principal of the Trust to any party requesting such certification and/or to any other party when so directed by the Company or the Company's duly appointed counsel in the United States.

2.6 Disbursements, Payments and other Distributions from the Trust Fund.

(a) After deducting any claims, expenses or other fees properly chargeable against income, the Trustee shall pay over to the U.S. Manager or reinvest the net amount of income from property deposited in various accounts of the Trust Fund, based upon the written order of the Company or its authorized representative.

(b) Regardless of other provisions of this Agreement, the Trustee shall not, without specific prior written approval of the Commissioner, make any distribution of cash or other property of the Trust, the fair market value of which, when taken together with other distributions of income made within the preceding twelve (12) months, exceeds the lesser of:

(1) 10 percent of the U.S. Branch's surplus as regards Policyholders as of the 31st day of December of the most recent calendar year; or

(2) the net gain from operations of the U.S. Branch of Company.

(c) The Trustee shall make distributions of property deposited to Account A only when the (U.S. Branch) Company has received the specific prior written approval of the Commissioner.

(d) The Trustee shall pay out so much of Account B as the (U.S. Branch) Company shall from time to time direct. The (U.S. Branch) Company shall represent to the Trustee whether amounts to be paid are for claims for losses or for return of unearned premium, as provided in this article, or whether such amounts are for some other payment purpose. If such amounts are for a purpose other than payment of a claim, the (U.S. Branch) Company shall represent whether there are sufficient funds representing earned premiums in Account B to cover such non-claim payment. The Trustee shall be entitled to absolutely rely on the representation of the (U.S. Branch) Company or its duly elected officers as to the amount of the Account B balance which is comprised of funds representing earned premiums and which is to be paid out by Trustee. If for any reason the sums on deposit in Account B shall be insufficient to satisfy payment of claims such that the Trustee intends to rely on Account C for payment of such claims, the Commissioner shall be provided 30-day written notice of intention by the Trustee to pay claims from Account C prior to such payment.

(e) Distributions out of Account C shall be for any payment provided for in this Trust Agreement which does not specify the account from which it is to be drawn. If for any reason the sums on deposit in Account C shall be insufficient to satisfy payment of such fees and expenses, Account B may be utilized for such purpose to the extent funds in Account B are available. Provided, however, that the Trustee shall provide the Commissioner 30-day written notice before utilizing Account B to pay items other than loss claims or claims for return of unearned premium. If the balance in Account B is insufficient or depleted, such amounts may be paid out of Account A. Provided, however, that no payments shall be made out of Account A which would reduce the amount therein to a balance of less than _____ (\$ _____) unless and until such payment shall have the specific prior written approval of the Commissioner.

(f) Notwithstanding the provisions of Section 2.5(d) of this article, the Trustee is authorized and empowered, upon the written direction of the U.S. Manager, to pay or deliver any or all income from the property of the Trust Funds created by this Agreement to the U.S. Manager, and accept his receipt for delivery of such funds. However, no withdrawal of any principal of the Trust Fund other than those specified in this Subsection may be made or permitted by the Trustee without prior written approval of the Commissioner, except as provided in paragraphs (1) through (3) of this subsection as follows:

(1) for the purpose of making deposits required by law in any state of the United States for the security or benefit of all policyholders and creditors of Company in the United States;

(2) for the purpose of substituting other property to Accounts B or C permitted by law and at least equal in value to those withdrawn, upon any general or specific written direction of the U.S. Manager, when duly empowered and acting pursuant to either general or specific written authority previously given or delegated by the Board of Directors of Company; or

(3) for the purpose of transferring such property to an official liquidator or rehabilitator pursuant to an order of a court of competent jurisdiction.

2.7 Accounting. (a) Trustee and Company agree that the books, records and accounting for Trust Fund property shall be kept and prepared in English in accordance with the laws of the State of Texas, and the rules and regulations of the Texas Department of Insurance of Texas, in the manner required of an insurer domiciled in Texas authorized to write the same class or classes of business for which (U.S. Branch) Company is authorized.

(b) The Texas Department of Insurance has the right to conduct an examination of the U.S. Branch including but not limited to all books, records and other documents relating to trust fund in the possession of Trustee or Company.

(c) Company agrees that the annual statement of the operations of the U.S. Branch shall be prepared annually, on a calendar-year basis and in such form as may be required by the insurance laws of the State of Texas, and such annual statement shall be filed with the Texas Department of Insurance on or before March 1 of each year, or as otherwise required by the insurance laws of the State of Texas. Provided, however, that Company and Trustee acknowledge that the Commissioner may require interim statements of operations for the U.S. Branch as provided by regulations in the Texas Administrative Code. Company also agrees that all premium tax reports shall be filed with, and all taxes due thereon shall be paid to, the Comptroller of Public Accounts for the State of Texas as required by the insurance laws of the State of Texas.

2.8 Foreign Relations. In the event of hostilities or cessation of diplomatic relations between the United States and Company's country of domicile, this Trust shall nevertheless continue as provided in this Agreement for the purpose of satisfying the valid claims of United States Policyholders. Trustee shall make no distribution of any income to Company or any other entity that would be contrary to any state or federal laws relating to assets of a foreign corporation whose country of domicile is engaged in hostilities or has ceased diplomatic relations with the United States. The assets of this Trust shall thereafter be held exclusively for the purposes expressed in this Agreement. In the event all policy obligations are completed as provided in this Agreement, the assets of this trust will be held by Trustee in accordance with any state or federal laws relating to assets of foreign corporations whose country of domicile is engaged in hostilities or has ceased diplomatic relations with the United States.

2.9 Term. (a) The Trust created by this Agreement shall commence as of approval of this Agreement by the Commissioner, shall be for a term of at least five years, shall be irrevocable and shall remain in full force and effect unless and until any one of the following events shall have occurred, at which time it shall terminate:

(1) the passage of five years from the date the Company shall notify the Trustee in writing of the Company's intention to terminate the Trust;

(2) the Company's becoming qualified, admitted and licensed to do an insurance and/or reinsurance business in some other State, Commonwealth or District of the United States of America, and upon the Company's receipt of approval to terminate the doing of business in Texas from the Commissioner;

(3) the Company's ceasing to do insurance business in the United States of America; or

(4) termination by operation of Law.

(b) Notwithstanding the provisions in paragraphs (1) through (4) of Section 2.9(a), this Trust shall continue until all policy obligations are completed as determined in this Agreement and in full compliance with applicable provisions of the Texas Insurance Code.

2.10 Termination. In the event of any termination of the Trust, the Trustee shall appoint a firm of certified public accountants as auditors and an independent audit shall be made of the Trust Fund as of the date of such termination and included in said audit an estimate shall be made by such independent auditors of the outstanding liability, if any, of the Company for incurred and unpaid losses (reported and unreported) and unearned premiums on United States policies issued by the Company to Policyholders during the term of the Trust and up to and including the date of termination. The auditors shall, upon the completion of such audit and from time to time thereafter, at the request of the Trustee, issue a certificate to the Trustee certifying the amount of any such outstanding liability at the date of such termination or at a later date specified in such certificate. The Trustee shall be protected in acting or relying upon any certificate of said auditors and shall retain such assets in the Trust Fund as may be stated in the auditor's report to be necessary and the Trustee shall pay or to be paid therefrom the amount of any such losses in the manner provided in Section 2.3 of this Article. Subject to the specific prior written approval of the Commissioner, upon the termination of the Trust, the Trustee shall transfer, pay over and deliver to the Company the income and principal of the Trust Fund then in its hands, or the balance thereof then remaining if losses are to be paid according to the certificate of the auditors and such payment, transfer and delivery shall constitute a full and sufficient discharge of all duties of the Trustee in respect thereof. In the event of a termination of the Trust by a Receiver or other party acting on behalf of the Company in insolvency, the terms of Section 2.3 of this Article shall nevertheless apply in conjunction with the terms of this Section 2.10.

2.11 Notification. (a) Upon receipt of written notice from the Company of the occurrence of any of the events described in Section 2.9 of this article, the Trustee shall notify the Commissioner, and all other Commissioners, Directors and/or Superintendents of Insurance of any Commonwealth, District or State of the United States of America in which (U.S. Branch) Company does business within 30 days of receipt of the decision of the Company.

(b) If the Trust Agreement is to be amended or supplemented, the Trustee shall provide written notice of such proposed amendments or supplements to the Commissioner and other persons described in Section 2.11(a), under the same conditions and procedures. Provided, however, that the parties understand and acknowledge that such amendments or supplements shall be effective only after the Commissioner has provided written approval of such amendments or supplements as provided in the Insurance Code [Article 3.27-1(e)] **OR** [Article 21.43, §10(e)].

2.12 Guaranty Fund. **[CHOOSE EITHER]** The U.S. Branch of the Company shall be considered an insurer for the purposes of Property and Casualty Insurance Guaranty Act, codified as Article 21.28-C of the Texas Insurance Code. The Trustee is authorized to pay any assessment required under the provisions of Article 21.28-C, Texas Insurance Code, out of any of the Account of Trust. Such payment shall be made in accordance with the provisions of Section 2.6(e) of this Trust Agreement.

OR

The U.S. Branch of the Company shall be considered an insurer for the purposes of Life, Accident, Health, and Hospital Service Insurance Guaranty Association Act, codified as Article 21.28-D of the Texas Insurance Code. The Trustee is authorized to pay any assessment required under the provisions of Article 21.28-D, Texas Insurance Code, out of any of the Account of Trust. Such payment shall be made in accordance with the provisions of Section 2.6(e) of this Trust Agreement.

ARTICLE III

PROVISIONS RELATING TO THE TRUSTEE

3.1 Qualification, Resignation and Replacement. (a) The Trustee shall be a bank or trust company organized under the laws of the United States or of Texas and shall be a member of the Federal Reserve System in the United States of America.

(b) Although Article II, Sections 2.9 and 2.10 provide for termination of the Trust, nonetheless the Trustee may resign at any time by mailing a written notice of such resignation by registered mail addressed to the Company at its last known address or by personal delivery to the Company, and by certified mail, return receipt requested to the U.S. Branch. Such written notice also shall be sent to the Commissioner. The notice shall provide that the resignation is to take effect on the date specified in such notice, but not less than 90 days after the mailing of such notice, or personal delivery of the notice if it is not mailed, unless the Company shall accept as adequate shorter notice and the Commissioner gives approval to such shorter notice.

(c) The Trustee appointed under this Agreement or any successor Trustee may be removed by the Company by mailing by registered mail addressed to such Trustee at its last known address or by actual delivery to the Trustee so to be removed and by sending written notice of such removal to the Commissioner, to take effect on the date specified in such notice, which date shall not be less than 90 days after the date of mailing of such notice or the personal delivery of the notice if it is not mailed, unless notice of shorter duration shall be accepted as adequate and approved by the Commissioner. No such removal of the Trustee shall become effective without its consent until all sums due under this Agreement to the Trustee for its fee and expenses have been paid to it.

(d) In the event of resignation or removal of the Trustee as provided in Section 3.1(b) and Section 3.1(c), the parties understand and acknowledge that such resignation or removal shall be effective only after a Successor Trustee has been appointed by the Company and approved by the Commissioner, and all assets in the Trust have been transferred to the new Trustee. Any Successor Trustee appointed under this Agreement may qualify as such by executing, acknowledging and delivering to the Company an instrument acknowledging acceptance of such appointment under this Agreement, in such form as may be satisfactory to Company.

(e) Further, in the instance of the resignation or removal of the Trustee, the Trustee shall have right to settlement of its account. Upon completion of such accounting and payment to the Trustee of its fee and expenses, the Trustee shall transfer, pay and deliver to the Successor Trustee the assets comprising the Trust Fund as they may be then constituted.

3.2 Duties and Liability. The Trustee shall be liable only for the safekeeping and administration of the Trust Fund in accordance with the provisions of this Trust Agreement and any amendments and supplements to it. No other or further duties or responsibilities shall be implied and the Trustee shall not be liable nor responsible for any loss to the Trust Fund, unless the same be caused by its fraud, gross negligence or willful misconduct.

3.3 Reliance on Certain Writings. The Trustee shall be fully protected in acting upon any instructions in this Agreement contained, or upon any written statements from Company or its duly authorized agents, statement, notice, resolution, request, consent, order, certificate, report, appraisals, opinion, telegram, cablegram, radiogram, letter, or other paper or document believed by the Trustee to be genuine and to have signed, sent or presented by the proper party or parties. The Trustee shall not be required to institute legal proceedings of any kind.

3.4 What Constitutes Conclusive Proof for Trustee. Whenever in the administration of the Trust created by this Trust Agreement, the Trustee deems it necessary or desirable that a matter be proved or established prior to taking or omitting any action under this Agreement, such matter, unless other evidence in respect thereof specifically prescribed, may be deemed to be conclusively proved and established by a statement or certificate purported to be executed in the name of the Company by such officer or officers of the Company or by such other agent or agents of the Company as may be designated by the Company for the time being, provided written notice of such designation by the Company shall be filed with and delivered to the Trustee for any action taken, suffered or omitted by it on faith thereof; but the Trustee in its discretion may instead accept other evidence of the fact or matter as may be reasonable, provided that in the event the effect of the action would be to terminate the Trust, the Trustee may rely only on a statement or certification of officers or agents of the Company duly authorized for this purpose.

3.5 What Constitutes Proper Execution for Trustee. Except when otherwise expressly provided in this Trust Agreement, and any amendments and supplements to it, any statement, certificate, notice, request, consent, approval, or other instrument to be delivered or furnished by the Company shall be sufficiently executed if executed in the name of the Company by such officer or officers of the Company or by such other agent or

agents of the Company as may be designated by the Company for the time being, provided, written notice of such designation by the Company shall be filed with the Trustee. The Trustee shall be protected in acting upon any written statement or other instrument made by such officers or agent of the Company with respect to the authority conferred on him.

3.6 Reliance on Opinions of its Counsel. The Trustee may consult with counsel selected by it and the opinion of said counsel shall be full and complete authority and protection to the Trustee in respect to any action taken, suffered or omitted by it in good faith and in accordance with the opinion of said counsel.

3.7 Fees and Reasonable Expenses. The fee of the Trustee for administering the Trust created by this Trust Agreement shall be such as may be mutually agreed upon from time to time between the Company and the Trustee. The fee of the Trustee and all reasonable expenses of the Trustee and counsel fees and other disbursements incurred and about the administration of the said Trust shall be first lien against the Trust Fund.

3.8 Maintenance and Inspection of Records. (a) The Trustee shall continuously maintain full and complete records of the administration of the Trust created by this Agreement.

(b) The Company may examine such records at any time during business hours by any person or persons duly authorized in writing by the Company. Whenever required by the Company, but not less than semiannually, the Trustee shall prepare and submit to the Company an account of its administration of the Trust created by the Trust Agreement.

(c) In addition to examination rights addressed in Section 2.7(b) of this Agreement, the Commissioner shall have free access to all books and papers within this State of the (U.S. Branch) Company for the purpose of inspecting and investigating its affairs and conditions.

(d) The Trustee shall from time to time, when required either by the (U.S. Branch) Company, by the U.S. Manager, or by the Commissioner, make, certify and file a statement of the description and amount of the Trust Fund and of the items comprising it, in such detail and form as the Company, the U.S. Manager, or the Commissioner may require.

ARTICLE IV

MISCELLANEOUS PROVISIONS

4.1 Severability. If any provision of the Trust Agreement shall be held invalid or unenforceable for any reason, the remaining provisions of this Agreement shall be construed and enforced as if the invalid or unenforceable provision had never been a part of this Agreement.

4.2 Governing Law. The provisions and validity and construction of this Trust Agreement and any amendments or supplements to it shall be governed by and determined according to the laws of the State of Texas.

4.3 Amendment Procedure. The Company shall have the right to amend, modify or extend in whole or in part this Trust Agreement and the trust created by this Agreement, subject to prior notification and prior written approval of the Commissioner. No such amendment, modification or extension shall be effective without written consent of the Trustee to it. The Trustee shall have absolute and uncontrolled discretion either to give or to withhold its consent under this Agreement and its decision in that respect shall be binding and conclusive upon all persons and parties. Except as provided in this Agreement, the Trustee shall not incur any individual liability for any decision made by it under this Agreement in good faith. Such amendment, modification or extension to it shall be set out in an instrument in writing executed by the duly authorized representatives of the Company and the Trustee.

4.4 Survival of Prior Obligations. This Trust Agreement shall be binding upon the successors and assigns of the parties hereto, present and future, and the execution of this Agreement by the Company and the Trustee shall serve to abrogate and supersede any prior Agreements, as amended, between the two parties as to the subject matter of this Agreement except the parties agree they shall assume and continue to honor any continuing obligations created thereby.

4.5 Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed and original, and the counterparts shall constitute but one and the same instrument, which shall be sufficiently evidenced by any one counterpart.

IN WITNESS WHEREOF, the Company and the Trustee have caused this Agreement to be executed by their duly authorized officers, and their corporate seals affixed hereto and attest as of the day and year above written.

Executed at:

Attest: _____ By: _____
(Office) (Office)

Executed at: _____, TRUSTEE

Attest: _____ By: _____
(Office) (Office)